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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JOHN MONTUE,

11 Petitioner,

No. CIV S-98-1580 LKK JFM P

12 vs.

13 G. A. MUELLER, et al.,

14 Respondents.

ORDER

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has filed a motion pursuant to Fed.
17 R. Civ. P. 60(b) for reconsideration of the judgment entered in this action on March 16, 2001
18 denying on the merits his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.
19 The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C.
20 § 636(b)(1)(B) and Local General Order No. 262.

21 On July 8, 2005, the magistrate judge filed amended findings and
22 recommendations¹ herein which were served on petitioner and which contained notice to
23 petitioner that any objections to the findings and recommendations were to be filed within twenty
24 _____

25 ¹ The amended findings and recommendations superseded findings and recommendations
26 filed on May 10, 2005 and vacated by the magistrate judge in his July 8, 2005 findings and
recommendations.

1 days. On July 20, 2005, petitioner filed objections to the findings and recommendations, and on
2 July 22, 2005 and July 29, 2005, petitioner filed amended objections to the findings and
3 recommendations.²

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
5 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire
6 file, the court finds the findings and recommendations to be supported by the record and by
7 proper analysis.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The findings and recommendations filed July 8, 2005, are adopted in full;
10 2. Petitioner's request for release on his own recognizance or reasonable bail is
11 denied; and

12 3. Petitioner's February 1, 2005 Rule 60(b) motion for reconsideration is
13 construed as a second or successive habeas corpus application and, so construed, dismissed
14 because the United States Court of Appeals for the Ninth Circuit has denied petitioner
15 authorization to proceed with such second or successive petition application.

16 DATED: August 23, 2005.

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19 /s/Lawrence K. Karlton
UNITED STATES DISTRICT JUDGE

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25 ² Petitioner has included with his objections a request for release on his own
26 recognizance or on bail during the pendency of this action. For the reasons set forth in the
magistrate judge's findings and recommendations, petitioner's habeas corpus application must be
dismissed without prejudice. A fortiori, his request for release on bail will be denied.